

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

DAVID STAVISKI d/b/a CHEMUNG
VALLEY ACOUSTICAL

And

CLAUDE J. BAILEY, JR., An Individual

Case 3-CA-24227

And

JOHN T. ERVAY, An Individual

Case 3-CA-24231

Lillian Kleingardner, Esq.,
Of Buffalo, New York
For the General Counsel

Joseph J. Steflik, Esq.,
Binghamton, New York
For the Respondent

DECISION

Statement of the Case

WALLACE H. NATIONS, Administrative Law Judge: This case was tried in Elmira, New York on August 20 and 21, 2003.¹ Claude J. Bailey, Jr., an individual, filed a charge in Case 3-CA-24227 dated May 1, 2003 and an amended charge was filed by him on June 25, 2003. John T. Ervay, an individual, filed a charge in Case 3-CA-24231 on May 6, 2003 and he filed an amended charge on June 25, 2003. Region 3 issued an Order Consolidating Cases, Consolidated Complain and Notice of Hearing on June 26, 2003. The Complaint alleges that David Staviski d/b/a Chemung Valley Acoustical (Respondent) has engaged in conduct in violation of Section 8(a)(1) and (3) of the National Labor Relations Act (Act). Respondent filed a timely answer and at hearing, a stipulation, which together admit the jurisdictional allegations of the complaint, the labor organizational status of Carpenters Local 281 (Union), and the supervisory and agency status of David Staviski, Owner of Respondent, and Robert Tompkins, Respondent's foreman.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

Findings of Fact

¹ All dates are in 2003 unless otherwise noted.

I. Jurisdiction

5 The Respondent, a sole proprietorship, with an office and place of business in Erin, New York, engages in the business of erecting drywall and acoustical partitions. It was admitted that it provided services in excess of \$50,000 for Heuber-Breuer Construction Company, Inc., an enterprise directly engaged in interstate commerce. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

10 As noted, Respondent, doing business as Chemung Valley Acoustical, engages in business as a non-union contractor performing framing, erecting drywall and acoustical partitions. The Company is owned by David Staviski and employs as foreman Robert Tompkins. 15 As of the date of hearing, Respondent had twenty employees. Staviski testified that there was significant turnover among his employees because of the seasonal nature of the work and depends upon which contractors are successful in getting jobs. Among others, Respondent employed Claude J. Bailey, Jr. and John T. Ervay as carpenters. The Complaint alleges that on or about April 25, 2003, Bailey and Ervay engaged in Union activity and in protected concerted 20 activities by complaining to third parties about the manner in which Respondent distributed paychecks and about Respondent's foreman Tompkins. It further alleges that on or about April 25, 2003, Respondent discharged Bailey and Ervay because of their protected activities.

A. Facts

25 Both Bailey and Ervay were employed by Respondent for one month. Bailey testified that he was hired by Respondent's foreman Tompkins after calling him looking for work. After talking with Tompkins on the phone he met him at a local bar, the Shoe Inn in Van Etten, New York. Bailey told Tompkins that he and a friend, Ervay, were looking for work and Tompkins 30 offered them a job starting the next day. Staviski testified that they were hired under different circumstances. He testified that he had known Bailey's family for thirty years. According to Staviski, Bailey and Ervay began coming to his house in the Spring every weekend for several weeks seeking employment². He testified that in this timeframe, Tompkins told him that he could use them as work was picking up. Staviski then testified that he hired the two men in March. 35 Bailey and Ervay's first job was at a museum in Ithaca, New York. Thereafter, Bailey and Ervay worked together on other jobs Respondent had in the area.

40 Michael Pavlick is employed as representative of the Union. Among his duties is that of organizer or recruiter for the Union. He has successfully recruited six of Respondent's non-union employees to join the Union over the last two years. Of the six, one dropped out of the Union and went back to Respondent.³ In or about October 2002, based upon allegations made by the Union, the New York Department of Labor conducted a proceeding against Respondent. As of

45 ² On rebuttal, Bailey testified that he only went to Stavinsky's house seeking work once. He testified that he called Staviski on the telephone several times seeking work.

50 ³ Staviski testified that over the years since he went into business in 1988, a number of his employees had quit and joined the Union and that some of them came back to his company later. He also testified that he has never used Union affiliation as a criterion for hiring or not hiring. However, none of the employees who left to work on Union jobs and who had come back retained affiliation with the Union.

the date of hearing, no determination had been made in that case.⁴

Pavlick testified that in April, he was notified by one of the Union's shop stewards that Respondent was working as a subcontractor on a job for Cayuga Imaging Center. The steward told him that two of Respondent's employees working on that job were interested in talking to him about joining the Union. The day following receipt of this information, apparently Wednesday April 23, Pavlick went to the jobsite and spoke to the two employees, who were Bailey and Ervay. Pavlick told them about the Union's wages and benefits and its apprenticeship program. He then gave them his business card and asked them to come by the Union hall, as he did not want to further interrupt their work on the job. Pavlick was observed talking to Bailey and Ervay by another of Respondent's employees, Paul Horton. Horton had formerly been a member of the Union and knew Pavlick to be a Union representative. According to Bailey, Horton reported to Tompkins that Bailey and Ervay had met with Pavlick and that the two men wanted to join the Union. According to Bailey, Tompkins replied, "Oh, really." At the end of this day, Bailey and Ervay were assigned to a different job by Tompkins. Tompkins denied knowing that Bailey and Ervay had discussions with the Union prior to Sunday April 27. He did not deny Bailey's assertions about Horton's conversation with Tompkins about Pavlick and Ervay and Bailey. I credit Bailey's testimony in this regard and find that Tompkins had knowledge of their interest in the Union as of Wednesday April 23.

The next day, Thursday April 24, the two men were sent to a job in Hector, New York with another of Respondent's employees, John Charles. During the day, Bailey told Charles that he might go to the Union Hall and join the Union. Ervay also talked about the Union with Charles that day. Bailey and Ervay went to the Union Hall after work that day. They expressed a desire to join the Union. Pavlick suggested they wait a while as business was slow and keep their current jobs until carpentry work pick up. He indicated that jobs should open up in May or early June. Pavlick kept their membership applications on file. It was Pavlick's understanding that Bailey and Ervay were going to continue working for Respondent until he could get them a Union job. The two men had expressed some concern about losing their jobs as the day after they first spoke with him, they had been transferred to a less desirable job by Respondent.⁵ At this meeting or shortly thereafter, Pavlick gave them the names of Union interior contractors in the area.

The next day, Friday, April 25, Bailey and Ervay returned to the Hector job and were joined by three other employees of Respondent. During the day, Ervay talked about the Union with one of these employees, Brandon Elliott. According to Bailey, the crew was to work until 3:30 pm, but they all left the job about thirty minutes early to get their paychecks. He and Ervay then went to a job site at Alpine Junction and met one of Baileys' friends, Matt Lehman and two men with him, Ed Vargo and Bruce Tubbs. Lehman and Vargo are building subcontractors. According to Bailey, he told the men that he had joined the Union and that he would leave Respondent if Union work were offered to him. According to Bailey, the three men encouraged him to do so. Bailey testified that he told them he would tell Staviski or Tompkins when he got a Union job. Bailey also told them that he and Ervay were going to the Shoe Inn to get their paychecks. Though Bailey had no memory at hearing of anything else that occurred in this conversation, his affidavit given to the Board states that he told the men that he was upset at having to go to the Shoe Inn to pick up his check, and that Tompkins would be "half in the bag"

⁴ At some point in time, Respondent was signatory to a contract with the Union, but at all times material to this proceeding, Respondent had no relationship with the Union.

⁵ Staviski testified that the two men were transferred because he was starting work on a project with a two week deadline for completion. He did put a number of men on this job.

and would not remember anything he told him to relay to Staviski. Ervay overheard some of this conversation, remembering Bailey saying that he did not like going to the Shoe Inn to get his check and that he and Ervay had joined the Union. Ervay then walked away to look at the jobsite and heard nothing more of the conversation.

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Lehman testified that he had known Bailey all his life and indicated they were good friends. He testified that in Bailey's conversation at the Alpine Junction jobsite, Bailey told him and the other men there that this was his last day working for Respondent because he was starting working with the Union on Monday. According to Lehman, Bailey said that Tompkins did not know what he was doing and that he did not care to work for Staviski any more. Specifically Bailey stated that Tompkins was a "fucking asshole" and Staviski "didn't know shit." Bailey added that Respondent did not do good work. Lehman did not remember the matter of Bailey's paycheck ever coming up in the conversation nor Bailey's assertions about Tompkins' drinking habits.

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Ed Vargo testified that he remembered Bailey telling him that this was the last day he and Ervay would work for Respondent because they had been hired by the Union. According to Vargo, Bailey added, "why should he do this (work for Respondent), that work for that much money. He got a job for the Union. He would be making a lot more money and the hell with Dave (Staviski)." Again, according to Vargo, Bailey said, "Fuck Dave. He'll find out I'm not coming back to work when I'm not working there on Monday."

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Bailey denied telling the men at the Alpine Junction jobsite that he was going to work on a Union job on Monday and testified that he did not know on Friday whether or not he would have a Union job on Monday.

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Ervay and Bailey then went to the Shoe Inn and had to wait until about 6:45 pm to get their paychecks. They were delivered to them by Staviski's girl friend. Tompkins was at the bar and raised an issue with them about leaving the Hector job early that day. Ervay and Bailey stayed at the bar for another hour and a half. According to Bailey, as they left the bar, another employee of Respondent, named Trent Thompson, was physically abusing his girl friend and Bailey had a fight with him. No one was hurt and the police were not called. Ervay testified that before the fight started Thompson told him and Bailey they were not going to have jobs anymore. Ervay asked why and Thompson told them they had talked about joining the Union, so why would they want to work for Staviski. Both Ervay and Bailey testified that they were next scheduled to work on Monday, April 28.

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According to Bailey, the following day, Saturday, April 26, he was called by his mother who told him that Tompkins had told her that he and Ervay were no longer employed by Respondent. Bailey testified that he reported this information to Ervay by phone, then Bailey called Staviski.⁶ According to Bailey, this call was made on Saturday afternoon at about 1:00 pm. When Staviski got on the phone, Bailey asked him "what was the deal? Why am I out of a job?" According to Bailey, Staviski said that he (Bailey) had "been talking bad about him and about the Union. Good luck with the union . . ." Bailey also asked if his discharge had anything to do with the fight the night before, and Staviski said he was unaware of the fight.⁷ Bailey then

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⁶ Ervay was not sure whether this phone call from Bailey took place on Saturday or Sunday.

⁷ I do not credit Bailey's version of this phone call and instead credit Staviski's version. I find that Bailey had a selective memory and could only remember things that would be helpful to his cause while not remembering things he said to persons with no stake in the outcome of this case.

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called Ervay and told him what Staviski had said. According to Ervay, Bailey told him they had been fired for talking about and joining the Union. Ervay confirmed on cross examination that this statement was not in his affidavit to the Board. Bailey then testified that he called his mother again, but could not remember what they talked about. Bailey added that he had not spoken
 5 with Staviski since Saturday April 26. Ervay accepted what Bailey had told him as fact and did not call Staviski or Tompkins himself, and did not report to work on the following Monday. He had not spoken with either Tompkins or Staviski until the hearing in this matter.

Deborah Bailey, Bailey's mother, testified that she had been acquainted with Tompkins
 10 for 30 years and ran into him at the Shoe Inn on Sunday, April 27 about 3:00 or 4:00 pm. She testified that she told Tompkins that her son was going to have problems on the job on the following Monday alluding to the fight the previous Friday night. According to Mrs. Bailey, Tompkins told her Bailey had been fired "because he's been bad mouthing me around to the other bosses . . ." She was angry and told Tompkins that it did not sound like her son and left.
 15 She called her son later that day and told him that he had better call Staviski because he had been fired. According to Mrs. Bailey, her son called Staviski and then called her back. He told her that Staviski had told him that as long as "he wanted to talk with Union representatives and be with the Union, go join them, you are fired."

Tompkins testified that he did have a conversation with Mrs. Bailey on Sunday the 27th. He testified on direct examination that she told him there there was "some trouble" or her son faced some trouble on the job, and he simply told her to have Bailey call Staviski. On cross examination, he added he told her to have her son call Staviski because he had learned earlier in the day in a call from Staviski, that Bailey had "badmouthed" him and Staviski on Friday. He
 25 testified that he next spoke with her on the following Monday or Tuesday and in this conversation, she confirmed that Bailey had gone to work for the Union and she had to drive him. He denied ever telling Mrs. Bailey that her son had been terminated. The credibility findings with respect to the alleged conversations between Mrs. Bailey and Tompkins are the most difficult to make in this record. Mrs. Bailey's version of the conversation with Tompkins would be
 30 consistent with a finding that Staviski fired Bailey because of the crude remarks made by Bailey to Lehman and Vargo, which had been relayed to Staviski. Tompkins version is also consistent with what the record will show that Staviski had learned the day before. I credit Tompkins version: however, in the Conclusion section of this decision I will deal with what happens if one credits her testimony. I do not credit her testimony about what her son told her as I do not
 35 believe her son. Moreover, Mrs. Bailey was not called to rebut Tompkins assertions that she said her son had a job with the Union.

Tompkins testified about a conversation he had with Bailey's half-brother, Dave Bailey, on Sunday April 27. According to Tompkins, Dave Bailey told him that Claude Bailey and Ervay
 40 were going to work for the Union the next day, Monday. It was not shown whether this information was related to Staviski at any time material to this case. Dave Bailey was not called to rebut this statement and no reason was given for not calling him. I believe this testimony supports the assertions by Lehman and Vargo that Bailey told them on April 25 that he and Ervay were going to work for the Union on Monday.

45 Staviski testified that the only employees he can remember terminating were three men, two in 1999 and one in 2000, for using drugs. He testified that Respondent did not terminate Bailey or Ervay. Staviski testified that the two men were scheduled to work on the Hector project next on Saturday the 26th, not Monday the 28th.⁸ He testified that Bailey and Ervay were
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⁸ On rebuttal, Ervay denied that he had been scheduled for work on Saturday.

assigned to this project along with a number of other employees in order for Respondent to meet a deadline in finishing the project. Staviski testified that he later learned that neither Bailey nor Ervay reported to work on Saturday the 26th.

5 Staviski testified that on Saturday the 26th, he went to a farm and equipment auction at the fairgrounds in Troy, Pennsylvania. He left for this trip at about 7:30 am and returned about 7:45 or 8:00 pm. Among other people going to the auction with him were Matt Lehman and Ed Vargo. According to Staviski, while at the fair, Vargo told him that on the previous day, Bailey and Ervay had stopped by their project Alpine Junction and that Bailey said some nasty things
10 about Staviski and his company. Vargo told Staviski that Bailey said that he and Ervay had joined the Union and were going to work for the Union on the following Monday. According to Staviski, Vargo told him that he asked Bailey if they had informed Staviski of this decision and Bailey responded, "Fuck Dave, he'll find out when we're not there on Monday." Staviski later added that Vargo told him that Bailey had called him a "fucking asshole." Lehman in his
15 testimony concurred that Staviski was told of the Bailey remarks made on the previous day. Vargo testified that he indeed relayed the contents of Bailey's conversation with him on Friday. Lehman also testified that a week before he testified in this proceeding that he told Counsel for General Counsel that he had not seen Staviski since the previous December. He then testified that he forgot about attending the auction with Staviski, even though Counsel for General
20 Counsel had asked him if the Bailey remarks of April 25 had been relayed to Staviski. Nothing was offered to make me doubt Vargo's testimony and I credit his testimony and that of Lehman. Both men were shown to be friends of both Bailey and Staviski. They have no obvious interest in the outcome of this case and I believe they were truthful. Bailey was given the opportunity on rebuttal to deny cursing Staviski to Lehman and Vargo and very equivocally only said he could
25 not remember making derogatory comments. He admitted there may have been bad language going on in their conversation, but qualified this by saying he could not remember. Ervay was conveniently out of hearing range when these comments were made.

30 Staviski then testified that either that night or the next day, Sunday, he was called by Bailey. According to Staviski, Bailey began the conversation by asking if he was fired because he beat up Trent Thompson in the parking lot of the Shoe Inn. Staviski testified that he told Bailey he knew nothing about the incident. He testified that he then said, "I don't know anything about you being fired. I understand you're going to work for the Union, good luck." And then he hung up. Staviski testified the subject of the Union had come up, but that he was not sure
35 whether it was he or Bailey that first mentioned it. Bailey, on rebuttal, denied telling Staviski in this conversation that he was quitting his employment with Respondent.

40 Tompkins testified that he spoke with Staviski early on Sunday and Staviski told him that Bailey had been badmouthing him and Staviski to two friends of Tompkins and Staviski. He testified that Staviski did not mention the Union in this call. He testified that he believed Bailey and Ervay to still be employed by Respondent after this call. His conversation with Staviski preceded his conversations on this day with David Bailey and Mrs. Bailey.

45 A few days later, Pavlick heard from Ervay, who informed him that he and Bailey had been discharged by Respondent. Pavlick testified that he was told that the reason they were fired was because they had talked with him. Thereafter both Bailey and Ervay were entered into the Union's apprenticeship program and found jobs. Bailey entered the apprenticeship program in May and Ervay in June. Bailey testified that he was currently working for a contractor named
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John C. Lowrey and had been so employed since April.⁹ Ervay testified that he too was currently employed by Lowrey.

5 B. Discussion and Conclusions

This case turns almost entirely on credibility. The most credible person testifying was Ervay and he barely said anything. If one believes Staviski, Tompkins, Vargo and Lehman, their testimony supports Staviski's assertion that he discharged neither Bailey nor Ervay. If one
10 believes Bailey, Pavlick and Baileys mother, then Bailey was discharged and the legal principles set out below apply.

To establish that an employee was disciplined or discharged in violation of Section 8(a)(1) and (3) of the Act, the General Counsel must persuade, by a preponderance of the
15 evidence, than an employee's protected conduct was a motivating factor in the employer's decision to discipline or discharge. Wright Line, a Division of Wright Line, Inc., 251 NLRB 1083 (1980); Manno Electric, Inc., 321 NLRB 278, 280 fn. 12 (The Board has traditionally described the General Counsel' burden of demonstrating discriminatory motivation as one of establishing a prima facie case. (citing Wright Line, supra) The D.C. Circuit has suggested that in light of
20 Office of Workers' Compensation Programs v. Greenwich Collieries, 114 S. Ct. 2551, 2557-2558 (1994) the General Counsel's burden of proof is a burden of persuasion, not merely of production, "it will no longer be appropriate to term the General Counsel's burden that of mounting a prima facie case; his burden is to persuade the Board that the employer acted out of anti-union animus." Southwest Merchandising Corp. v. NLRB, No. 93-1859, slip op. 9 fn. 9 (May
25 12, 1995). This change in phraseology does not represent a substantive change in the Wright Line Test. Under that test, the Board has always first required that the General Counsel persuade that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employees had not engaged in
30 protected activity. Office of Workers' Compensation Programs v. Greenwich Collieries, supra. The elements commonly required to support the General Counsel's burden of proof to show discriminatory motivation are union or concerted protected activity, employer's knowledge of that activity, timing and employer animus.

Clearly Bailey and Ervay engaged in Union activity. They spoke to Union representative Pavlick on a job site and that fact plus the fact that they wanted to join the Union was made
35 known to Tompkins on April 23. Bailey also told Lehman and Vargo that they had indeed joined the Union and that fact was relayed to Staviski at the Pennsylvania auction. In Bailey's conversation with Lehman and Vargo on April 25, I find that he was speaking on behalf of both
40 himself and Ervay insofar as the comments made by him in the presence of Ervay are concerned. Though Ervay did not comment, he did not indicate any disagreement with what Bailey said. What he heard were comments by Bailey complaining of the method of distributing paychecks, and complaints about Tompkins forgetfulness because of his drinking. These two complaints are protected as they relate to legitimate problems related to conditions of
45 employment. Meyers Industries, Inc., 281 NLRB 882 (1986); A/Z Electric, Inc., 282 NLRB 356, (1986); Richboro Community Mental Health Council, Inc., 242 NLRB 1267 (1979); Allied Aviation Service Company of New Jersey, Inc., 248 NLRB 229 231 (1980). It is not clear if and how these two specific complaints were relayed to Staviski at the auction and under any reading of the evidence, do not appear to have played any role in subsequent events.

⁹ At a later point, he testified that he did not get work for three weeks after April 25.

Out of Ervay's hearing, I find that Bailey in the conversation called Tompkins a "fucking asshole" and stated that Staviski "didn't know shit," and demeaned the quality of Respondent's work. I do not find these comments protected or concerted. Ervay was not present at the time
 5 Bailey made these statements and thus Bailey was acting alone and not in concert with others. Moreover, these comments have no rational relationship to any working concern of either Bailey or Ervay. These inflammatory comments were relayed to Staviski at the auction and made him understandably angry with Bailey. Thus, by Sunday, Staviski had knowledge of at least Ervay and Bailey's Union activity and Bailey's nasty comments about him, his company and his
 10 foreman.

If Bailey were fired on Saturday or Sunday, the timing of such action clearly support a finding of discriminatory motivation, coming three days after the first Union activity by Bailey or within hours of Staviski learning of such activity. It would also support a finding that the
 15 discharge was in response to Bailey's unconcerted and unprotected comments about Staviski and Tompkins. However, there first remains the hurdle of finding whether any discharge took place. Staviski asserts he fired neither Bailey nor Ervay. I agree completely that he did not discharge Ervay. There was no mention of Ervay in any version of Staviski's phone conversation with Bailey on Saturday or Sunday and none in Mrs. Bailey's conversation with
 20 Tompkins. There was no assertion that Ervay was named by Vargo in his conversation with Staviski as having said anything. Bailey was not an agent of Respondent and his telling Ervay he had been fired does not make it true.

I also do not believe Bailey was discharged. I accept Staviski's version of the
 25 conversation. I find that Bailey told Vargo and Lehman that he and Ervay had accepted jobs with the Union and that he told Vargo and Lehman, "Fuck Dave. He'll find out I'm not coming back to work when I'm not there on Monday." Under Staviski's version of his phone conversation with Bailey, it is clear he believed that to be true. Staviski ended the conversation with Bailey by saying, "I understand you're going to work for the Union. Good luck, " and then he
 30 hung up. It is not clear when Bailey did take a job with a Union contractor. He first testified that it was in April, which would mean he started such employment in the first three days after talking with Staviski on the telephone. This date was easily obtainable from either the contractor Lowery or from the Union's records, but was not presented by General Counsel. I do find that Staviski believed that Bailey was going to work with a Union contractor.

Even if I were to believe Mrs. Bailey's testimony about her conversation with Tompkins and find that Staviski did discharge Bailey, I do not believe Bailey's Union or protected concerted activity had anything to do with it. There was no showing in the record of any adverse action taken by Respondent against any employee for engaging in Union activity. He had hired
 40 back employees who had left to go to work with a Union contractor, and there was no contention that any employees who had joined the Union while working for Respondent were discharged. There is no evidence that Staviski or Tompkins warned Bailey, Ervay or any other of their employees about engaging in Union activity or said anything adverse about the Union. Tompkins had known of Bailey and Ervay's Union activity since April 23 and Bailey and Ervay
 45 were openly talking about it daily. Yet they were not fired based on this knowledge. If fired at all, Bailey was only fired after Staviski learned from Vargo what Bailey had said about him. I do believe Staviski was angry that Bailey would demean and curse him in front of Staviski's friends. I credit Staviski's testimony and I find that he believed that Bailey had called him a "fucking asshole." I find that if Staviski did discharge Bailey it was because of that anger. Bailey had only
 50 worked for Staviski for a month. The comments made by Bailey demeaning Staviski were not protected concerted activity. I am completely unpersuaded that anti-union animus played any part in anything Staviski did in relation to either Bailey or Ervay. I will recommend that the

Complaint be dismissed.

Conclusions of Law

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1. The Respondent is an employer within the meaning of Section 2(2), (6) and (7) of the Act.

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2. The Union is a labor organization within the meaning of the Act.

3. The Respondent did not commit the unfair labor practices alleged in the Complaint.

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On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

The complaint is dismissed.

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Dated, Washington, D.C.

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Wallace H. Nations
Administrative Law Judge

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¹⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.